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NO. 86-433

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Petitioner,

vs.

JULIE D. KNOWLES,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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SUMMARY OF ARGUMENT

The appellate court below was called upon simply to decide whether the Magistrate below abused his discretion in granting a motion to alter or amend a judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Given the ample discretion afforded a trial court under such circumstances, and the very purpose of Rule 59(e) being to correct mistakes of fact by the court, the Fourth Circuit correctly found there was no such abuse of discretion. The Fourth Circuit's decision is not in conflict with other federal appellate

decisions regarding the right to jury trial because the lower court did not interfere in any way with this right. Thus, there is absolutely no need for this Court to grant certiorari to provide guidance as to the interpretation of the Federal Rules of Civil Procedure or otherwise.

ARGUMENT

PETITIONER HAS SHOWN NO BASIS FOR GRANTING A WRIT OF CERTIORARI

A. The Standard for Granting A Writ of Certiorari

Pursuant to Rule 17 of the Rules of the Supreme Court of the United States, review on a writ of certiorari will be granted, *inter alia,* for the following reasons:

> . . . When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; . . . or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

S.Ct.R. 17.1(a).

In seeking certiorari, Petitioner apparently relies on the federal magistrate's and the Fourth Circuit's alleged "conflict . . . with established authority dealing with the subject of the right to jury trial," their "unprecedented . . . depart[ure] from the common law" and the purported need for this Court to exercise its authority as "the ultimate interpreter of the Federal Rules of Civil Procedure." Petition For A Writ of Certiorari, at 7-8. Notwithstanding these assertions, there is simply no basis for a grant of certiorari in this case because

the Fourth Circuit, in affirming the federal magistrate's actions, neither conflicted with the decision of another federal appellate court nor departed from the usual course of judicial proceedings.

At the outset, it should be noted that the standard of review used by an appeals court in reviewing a lower court's application of Rule 59(e) of the Federal Rules of Civil Procedure is exceedingly narrow — an abuse of discretion standard. *See, e.g., Hamilton* v. *Bean,* 745 F.2d 1034, 1036 (6th Cir. 1984); *McCarthy* v. *Manson,* 714 F.2d 234, 237 (2d Cir. 1983); *Harjo* v. *Andrus,* 581 F.2d 949, 953 (D.C. Cir. 1978). The narrowness of appellate review is necessitated by the wide discretion vested in the trial court in applying Fed.R.Civ.P. 59(e) to alter or amend a judgment. *See, e.g., Slater* v. *KFC Corp.,* 621 F.2d 932, 939 (8th Cir. 1980); *York Chrysler-Plymouth, Inc.* v. *Chrysler Credit Corp.,* 447 F.2d 786, 794 (5th Cir. 1971); *Florencio Roman, Inc.* v. *Puerto Rico Maritime Shipping Authority,* 454 F.Supp. 521, 526 (D.P.R. 1978).

Thus, in deciding whether the Fourth Circuit departed from accepted judicial precedent or the usual course of judicial proceedings, this Court has an even narrower mandate than did the Fourth Circuit; this Court must determine whether the Fourth Circuit improperly applied the abuse of discretion standard in reviewing the Magistrate's acts. In any event, this Court has traditionally accorded great weight to fact-finding made by the trial court and approved by the appeals court. *National Collegiate Athletic Ass'n.* v. *Board of Regents of University of Oklahoma,* 468 U.S. 85 (1984). In sum, there is no ground for granting certiorari in the instant case under *any* standard (as will be shown in Part B below), much less the highly restrictive one applicable herein to review of grants of Rule 59(e) motions.

B. Application of Fed.R.Civ.P. 59(e)

First and foremost, contrary to petitioner's characterizations, this case does not involve a trial court "reversing" or "vacating" a jury verdict under the authority of Fed.R.Civ.P. 59(e).[1] To the contrary, what the Magistrate did was alter the Special Interrogatories which had already been posed to, and answered by, the jury by striking only Interrogatory No. 2 and its response concerning the so-called "conditional acceptance" defense. In so doing, the Magistrate left intact Interrogatory No. 1 and its response and the resulting judgment for Respondent.

The Magistrate's rationale for striking a portion of the interrogatories was that respondent's counsel, unbeknownst to the Magistrate until *after* jury deliberations, had been surprised at trial by the sudden interposition of this conditional acceptance defense. In the Magistrate's own words:

> The Court mistakenly thought that Plaintiff [respondent] was or should have been aware of the conditional acceptance defense interposed by defendant [petitioner] and that plaintiff [respondent] should have but failed to object before trial. *This mistake of fact led the Court to submit the issue of conditional acceptance to the jury which would not have been done otherwise*. . . . Pursuant to Rule 59(e), this Court will enter an Order separately

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[1]Much is made of the scope and proper use of Fed.R.Civ.P. 59(e). The scope of that one rule is, however, of little practical moment in the instant case. The exact same result could have well been accomplished pursuant to Fed.R.Civ.P. 50(b). The motion for relief which the Court granted was made within ten days of the original judgment after a motion for directed verdict was made on the disputed question to the jury.

> altering the judgment to what would have been rendered had the issue of conditional acceptance not been before the jury. . . .

App.17a-18a (emphasis added).

Respondent does not dispute petitioner's contention that Fed.R.Civ.P. 59(e) may not be used to undermine the jury's fact-finding role or to divest a defendant of the Seventh Amendment right to a jury trial.[2] However, neither of these concerns is implicated in any way in the case at bar. The Magistrate did not upset the jury's findings of fact based on his view of what the evidence showed. Rather, he altered the judgment — to rectify his own mistake of fact — as if the conditional acceptance defense had never been submitted to the jury at all. A trial court clearly has the discretion to estop a litigant by its conduct from having an issue considered by the trier of fact, particularly where a party has omitted that issue from the pretrial order. *Matter of Intercontinental Properties Management, S.A.,* 604 F.2d 254, 259 (4th Cir. 1979).[3]

Indeed, Fed.R.Civ.P. 59(e) is designed precisely for situations where the trial court is called upon merely to correct a judgment, not to find different facts from the evidence or change the jury's factual findings. *Mumma* v. *Reading Co.,* 247 F.Supp. 252, 259-60 (E.D. Pa. 1965); *accord York Chrysler-Plymouth, Inc.* v. *Chrysler Credit Corp.,* 447 F.2d at 795. A Rule 59(e) alteration or amendment of a judgment

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[2]The lack of merit in petitioner's position that it was deprived of its constitutional right to a jury trial is buttressed by the fact that petitioner never raised this argument at the trial court level and did not brief or argue it on appeal until the unsuccessful Petition for Rehearing.

[3]Indeed, there was some question expressed by the Magistrate as to whether this omission was a deliberate tactic by petitioner. App.16a-17a.

therefore must be based on a mistake by the court, not the jury. *Branson* v. *Prins Ins. Inc.,* 79 F.R.D. 662, 664 (D.S.D. 1978). In the instant case, this is precisely what occurred: the Magistrate altered the jury verdict form due to his mistake of fact, never tampering with the jury's fact-finding role in the least. The Magistrate's removal of the conditional acceptance defense in Interrogatory No. 2 from the purview of the jury via Rule 59(e) *after* jury deliberations was in scope or effect no different than if he had granted summary judgment on that issue against petitioner (defendant below) for the same reasons *prior* to jury deliberations.

Finally, there is absolutely no basis in the cases or authority cited by petitioner for its suggestion that a new trial is the sole and exclusive remedy where a surprise issue is raised at trial. Petition For A Writ Of Certiorari, at 9-10. While this may be *one* available remedy, it is well within a trial court's discretion to withhold an issue from the jury based on a litigant's improper conduct rather than automatically be compelled to order a new trial. *See Matter of Intercontinental Properties Management,* 604 F.2d at 259.

CONCLUSION

For the foregoing reasons, Respondent prays that this Court deny the petitioner's Petition For A Writ of Certiorari because certiorari is wholly unwarranted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 1986, three copies of the foregoing Brief In Opposition To Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit were mailed, postage prepaid to Barrett W. Freedlander, Esquire, Niles, Barton & Wilmer, 929 North Howard Street, Baltimore, Maryland 21201, counsel for the Petitioner.

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